IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.4832 OF 1998

Intec Polymers Ltd. ...Plaintiff
vs.
Resha Wires Pvt.Ltd. ...Defendant

Mr.Nikhil Dharod i/b M/s.Pravin Mehta & Mithi & Co. for the Plaintiff

CORAM: A.S.OKA,J.
DATE : AUGUST 9,2007

ORAL JUDGMENT:

1. The suit is listed under the caption 'undefended suits for exparte decree'. The learned Counsel for the plaintiff has tendered on record an Affidavit of Mr.Naresh Prabhu, Assistant Manager (Export Sales) of the plaintiff. The said affidavit has been filed by the plaintiff for proving their claim in the suit. The Affidavit is taken on record and marked 'X' for identification. The plaintiff has already tendered on record certain documents along with two separate lists. The said lists are taken on record and marked 'Y' and 'Z' (collectively) respectively for identification.

2. The suit is filed for recovery of the price of the goods sold, supplied and delivered to the defendants. According to the case of the plaintiff during the period between February 1993 and December 1994, the defendant-company placed orders with the plaintiff for supply of wire enamel of various grades (hereby referred to as said goods). The plaintiff has raised various invoices in respect of the said goods sold, supplied

and delivered to defendant. According to the case of the plaintiff running account was maintained pertaining to the sale of the goods to the defendant. It is stated that the goods were accepted without any demur either as to its quality, quantity, price or otherwise. According to the case of the plaintiff, since the defendant was not regular in payment of invoice amount, the plaintiff took back the goods worth Rs.5,90,894.58. The plaintiff gave credit for the said amount in their running account of the defendant. The defendant thereafter issued a cheque dated 29th March 1995 for a sum of Rs.3,30,747/- in part payment of the amount due and payable. According to the case of the plaintiff the said cheque was dishonoured with a remark 'Not arranged for'.

3. The defendant paid a sum of Rs.1,00,000/- by a cheque dated 27th October 1995 towards its liability. Thereafter, no further amount was paid by the defendant to the plaintiff.

4. By a letter dated 4th December 1996 sent by the plaintiff to the defendant-company, a demand was made for payment of outstanding amount of Rs.3,22,896.81. A fax message was sent by the plaintiff on 10th March 1997 requesting the defendant to make payment of the said amount. According to the case of the Plaintiff, by a letter dated 10th March 1997 the defendant responded to the fax message and stated that the defendant had every intention to pay. The Plaintiff was assured that as soon as the defendant gets some funds rolling, the plaintiff

will be first on the payment list. Reliance is placed on another letter dated 12th February 1998 sent to the plaintiff by the defendant assuring the plaintiff to clear the payment.

5. As the payment was not made, the plaintiff issued Advocate's notice dated 18th March 1998 calling upon the defendant to pay the dues. By way of reply dated 30th March 1998, the defendant came out with a case that only a sum of Rs.60,000/- was outstanding. The plaintiff has claimed outstanding amount with interest at the rate of 24% p.a.

6. The plaintiff has placed on record office copies of 19 invoices on which reliance has been placed in the plaint. A copy of letter dated 10th March 1997 sent by the defendant to the plaintiff is also placed on record. A copy of letter dated 12th February 1998 sent by the defendant is also placed on record. In the affidavit of Shri Naresh Prabhu it is stated that the original letters dated 10th March 1997 and 12th February 1998 addressed by the defendant to the plaintiff have been misplaced. Hence, permission is sought to lead secondary evidence by producing photo copies which are placed on record and marked 'Y' (collectively). In view of the categorical statement on oath, permission deserves to be granted to lead secondary evidence of the said two letters. The letter dated 10th March 1997 sent by the defendant is in response to the fax message dated 10th March 1997 sent by the plaintiff to the defendant. In both the letters, there is a

categorical assurance given by the defendant to pay the outstanding amount to the plaintiff. A copy of notice dated 8th March 1998 and reply dated 30th March 1998 sent by the defendant to the notice are also placed on record. The plaintiff has also placed on record the extract of running account maintained by the plaintiff.

7. In view of the documents placed on record and affidavit, the claim of the plaintiff has been duly established. Invoices placed on record show that the credit period granted was 45 days. Invoices mention that the interest will be payable on unpaid amount at the rate of 24% p.a. The plaintiff has prayed for further interest at the rate of 24% p.a. from the date of the suit. Considering the facts and circumstances of the case, further interest will have to be granted at the rate of 12% p.a.

8. Hence, the suit is decreed in terms of prayer clause (a) with a modification that interest on the sum of Rs.3,22,896.81 will be payable at the rate of 12% p.a. from the date of institution of the suit till the payment or realization. The plaintiff will be entitled to refund of court fees as per rules. Certified copy is expedited.

JUDGE